

OPEN MEETING ITEM

COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



ARIZONA CORPORATION COMMISSION



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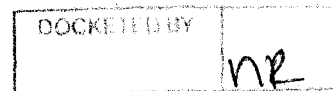
DOCKET NO.: T-03886A-10-0069

Arizona Corporation Commission

DOCKETED

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TO ALL PARTIES:



Enclosed please find the recommendation of Administrative Law Judge Yvette B. Kinsey. The recommendation has been filed in the form of an Opinion and Order on:

TDS LONG DISTANCE CORPORATION
(CC&N/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

DECEMBER 5, 2011

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 13, 2011 and DECEMBER 14, 2011

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE - Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION OF
9 TDS LONG DISTANCE CORPORATION FOR
10 APPROVAL OF A CERTIFICATE OF
11 CONVENIENCE AND NECESSITY TO
12 PROVIDE FACILITIES-BASED LONG
13 DISTANCE AND PRIVATE LINE
14 TELECOMMUNICATION SERVICES IN
15 ARIZONA.

DOCKET NO. T-03886A-10-0069

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: October 4, 2011

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey

14 APPEARANCES: Mr. Jeffrey W. Crockett, BROWNSTEIN HYATT
15 FARGER SCHRECK LLP, on behalf of Applicant; and

16 Ms. Kimberly Ruht, Staff Attorney, Legal Division, on
17 behalf of the Utilities Division of the Arizona
18 Corporation Commission.

19 **BY THE COMMISSION:**

20 On February 25, 2010, TDS Long Distance Corporation ("TDS" or "Company") filed with the
21 Arizona Corporation Commission ("Commission") an application for approval of a Certificate of
22 Convenience and Necessity ("CC&N") to provide facilities-based long distance, resold long distance,
23 and intraLATA and interLATA private line telecommunication services in Arizona.¹ TDS'
24 application also seeks a determination that its proposed services are competitive in Arizona.

25 On October 13, 2010, TDS filed copies of financial statements for its parent company,
26 Telephone & Data Systems, Inc.

27 ¹ In Commission Decision No. 65991 (June 17, 2003) TDS was granted authority to provide competitive resold
28 interexchange services. Therefore, this Opinion and Order only addresses TDS' request for authorization to provide
facilities-based long distance and private line telecommunication services in Arizona.

1 On July 1, 2011, the Commission's Utilities Division ("Staff") filed a Staff Report
2 recommending approval of TDS' application, subject to certain conditions.

3 On August 1, 2011, by Procedural Order, a hearing was scheduled to begin October 4, 2011, and
4 other procedural deadlines were established.

5 On September 1, 2011, Jeffrey W. Crockett of Brownstein Hyatt Farber Schreck, LLP filed a
6 Notice of Appearance on behalf of the Company.

7 On the same date, TDS filed a request to extend the deadline for filing its affidavit of
8 publication and to change the hearing date, or alternatively, to be granted leave for TDS' witness to
9 appear telephonically. The request stated that TDS had completed publication of notice; however,
10 the affidavits would not be available until September 15, 2011, which was after to the deadline
11 ordered in the August 1, 2011, Procedural Order. Further, the request stated that TDS' witness would
12 be traveling and unavailable to personally appear for the currently scheduled hearing date and TDS
13 requested that the hearing date be changed from October 4, 2011, to October 16, 2011. Alternatively,
14 TDS requested that if the hearing date remained as scheduled, that its witness be allowed to appear
15 telephonically.

16 On September 7, 2011, Staff filed a response to TDS' request, stating that Staff had no
17 objection to either of TDS' proposed alternatives.

18 On September 14, 2011, TDS filed a Withdrawal of Request to Change the Hearing Date.
19 TDS' filing stated that TDS continued to request that its witness appear telephonically for the hearing
20 scheduled for October 4, 2011, but that TDS withdraws its request for a change in the hearing date.
21 Further, TDS requested an extension of time, until September 21, 2011, to file an affidavit of
22 publication.

23 On September 19, 2011, by Procedural Order, TDS' request for its witness to appear
24 telephonically and for an extension of time, until September 21, 2011, to file an affidavit of
25 publication was granted.

On September 21, 2011, TDS filed Notice of Filing Affidavits of Publication stating that notice of the application and hearing date had been published in seventeen newspapers, which included the *Arizona Republic*, a newspaper of general circulation in the State of Arizona.

On October 4, 2011, a hearing was held as scheduled before a duly authorized Administrative Law Judge ("ALJ") of the Commission. TDS and Staff appeared through counsel and presented testimony and evidence. No members of the public appeared to provide public comment. At the conclusion of the hearing, several post hearing documents were ordered by the ALJ.

On October 7, 2011, TDS filed its Notice of Filing Revised Tariff Sheets.

On October 12, 2011, Staff filed a Notice of Filing Staff Comments

Upon receipt of the post hearing documents, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. TDS is a foreign C corporation organized under the laws of Delaware and authorized to transact business in Arizona.²

2. TDS is currently authorized to provide competitive resold interexchange telecommunication services in Arizona.³ TDS also has two sister companies, Arizona Telephone Company and Southwestern Telephone Company, currently providing local exchange telecommunication services in Arizona.⁴

3. By its application, TDS is seeking authority to provide facilities-based long distance, and private line intraLATA and interLATA telecommunication services in Arizona.

4. Notice of the application was given in accordance with the law.

5. Staff recommends that the Commission approve TDS' application for a CC&N to provide intrastate telecommunication services in Arizona, subject to the following conditions.

² Exhibit A-1, Attachment A.

³ Commission Decision No. 65991 (June 17, 2003).

⁴ Exhibit S-1.

6. Staff recommends that:

- a. TDS comply with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
- b. TDS abides by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
- c. TDS notify the Commission immediately upon changes to TDS's name, address or telephone number;
- d. TDS cooperate with Commission investigations including, but not limited to customer complaints;
- e. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Staff obtained information from TDS estimating that its net book value or fair value rate base, at the end of the first twelve months of operation to be zero. Staff has reviewed the rates to be charged by the TDS and believes they are just and reasonable as they are comparable to other competitive local carriers offering service in Arizona and comparable to the rates TDS charges in other jurisdictions. The rate to be ultimately charged by TDS will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by TDS, the fair value information provided was not given substantial weight in this analysis;
- f. That if at some future date, TDS wants to collect advances, deposits and/or prepayments from its interexchange or private line service customers, TDS should be required to file an Application with the Commission for Commission approval. Such Application must reference the Decision in this docket and must explain the TDS' plans for procuring its performance bond or irrevocable sight draft letter of credit ("ISDLC"); and
- g. The Commission authorize TDS to discount its rates and service charges to the marginal cost of providing the services.

8. Staff further recommends that TDS' CC&N be considered null and void after due process if TDS fails to comply with the following conditions:

- a. TDS shall docket conforming tariffs for each of its proposed services within 365 days from the date of a Decision in this matter, or 30 days prior to providing service, whichever comes first. The tariffs submitted shall coincide with the application and state that TDS does not collect advances, deposits and/or prepayments from its customers.
- b. TDS shall:
 - i. Procure either a performance bond or ISDLC equal to \$200,000. The minimum performance bond or ISDLC of \$200,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from TDS' customers. The performance bond or ISDLC should be increased in increments of \$100,000. This increase should occur when the total amount of advances, deposits, and/or prepayments is within \$20,000 of the total

performance bond or ISDLC amount; and

ii. File proof of the performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of the Decision in this matter or 10 days before the first customer is served, whichever comes first. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers.

iii. TDS shall notify the Commission through a compliance filing when it begins serving customers; and

c. TDS should abide by the Commission adopted rules that address Universal Service in Arizona, which indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service fund. TDS should make the necessary monthly payments required under by A.A.C. R14-2-1204(B).

Technical Capability

9. According to Staff, TDS has been operating as a reseller of long distance telecommunication services in Arizona since receiving its authority to do so in 2003.⁵ TDS states it is currently providing Message Service/Direct Dialing Telecommunication services, Wide Area Telecommunication services, Post Paid Calling Card, 1+ Dialing, 800/Toll Free, and Directory Assistance and Operator services in Arizona.⁶ Further, the parent companies of TDS have been in the telecommunications business for 30 years.⁷

10. TDS is currently authorized to provide telecommunications services, similar to those it intends to offer in the Arizona, in twenty-nine states.⁸ TDS currently offers its authorized services in all twenty-nine states.⁹

11. TDS states that it will provide its proposed services using a combination of underlying

⁵ Exhibit S-1.

⁶ Exhibit A-1.

⁷ Id.

⁸ Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Kentucky, Maine, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington and Wisconsin. (Staff Report, Att. A)

⁹ Exhibit A-1.

1 carriers and its own facilities.¹⁰

2 12. TDS expects to begin providing its facilities-based services in Arizona, immediately
3 upon approval of a CC&N.¹¹

4 13. Staff concluded that TDS has the technical experience to provide the proposed
5 services described in its application.¹²

6 **Financial Capabilities**

7 14. TDS provided audited consolidated financial statements of its parent company, TDS
8 Telecom, which is a subsidiary of Telephone & Data Systems, Inc. For the year ending December
9 31, 2009, TDS reported Total Assets of over \$7.6 billion; Total Equity of over \$3.7 billion; and a net
10 income of \$2.5 million.

11 15. TDS states it may rely on the financial resources of its parent company.¹³

12 16. TDS submitted a proposed tariff in this matter.¹⁴ TDS' proposed tariff states it will
13 not collect advances, prepayments, or deposits from its customers.¹⁵ However, based on the
14 Commission's policy, Staff recommends that TDS procure a performance bond or ISDLC in the
15 amount of \$200,000.

16 17. TDS' witness stated that TDS does not oppose Staff's recommendation requiring a
17 performance bond or ISDLC in this matter.¹⁶

18 18. Staff recommends that TDS file an application pursuant to A.A.C. R14-2-1107 if it
19 desires to discontinue its services in Arizona. Staff further recommends that if TDS fails to meet the
20 requirements set forth in A.A.C. R14-2-1107, that the performance bond or ISDLC should be subject
21 to forfeiture.

22 **Rates and Charges**

23 19. Staff believes TDS will have to compete with incumbent local exchange carrier
24 ("ILECs"), various competitive local exchange carriers ("CLECs") and interexchange carriers

25

¹⁰ Id.

26 ¹¹ Tr. at 9.

¹² Exhibit S-1.

27 ¹³ Exhibit A-1.

¹⁴ Exhibit A-3.

28 ¹⁵ Id.

¹⁶ Tr. at 14.

1 (“IXCs”) to provide its proposed services.¹⁷

2 20. Staff reviewed TDS’s proposed revised tariff and concluded that TDS’s proposed rates
3 are comparable to other incumbent providers and other competitive providers doing business in
4 Arizona.¹⁸ Therefore, given the competitive environment in which TDS will be providing service,
5 Staff believes TDS will not be able to exert any market power and the competitive process will result
6 in rates that are just and reasonable.

7 21. TDS requests a determination that its proposed rates are for competitive services. Staff
8 states that in general, rates for competitive services are not set in the same manner as for non-
9 competitive services. Staff states that based on TDS’ estimates that its fair value rate base will be
10 zero at the end of the first twelve months of service, and that the rate to be charged by the Company
11 will be heavily influenced by the market, Staff considered TDS’ fair value rate base but it was not
12 given substantial weight in Staff’s analysis.

13 **Complaint Information**

14 22. TDS states that it has not had an application for service denied, nor has it had authority
15 to provide service revoked in any state.¹⁹

16 23. TDS states that there have been no formal complaint proceedings, or civil or criminal
17 proceedings filed against the Company.²⁰

18 24. The Commission’s Consumer Services Section reported that eleven complaints had
19 been failed against TDS since 2007. The complaints involved billing, quality of service, and repair
20 issues. Staff confirmed that all complaints have been resolved and closed. Further, Staff’s witness
21 testified that the complaints filed against the Company were “general customer complaints” and did
22 not raise any concerns regarding the Company’s fitness to provide its proposed services in Arizona.²¹

23 25. TDS also stated that none of its officers, directors, or partners have been involved in
24 any criminal investigations, or any formal or informal complaints. TDS also reported that none of its
25 officers, directors, or partners have been convicted of any criminal acts in the past ten years.

26 _____
¹⁷ Exhibit S-1.

27 ¹⁸ Notice of Filing Staff’s Comments dated October 12, 2011.

28 ¹⁹ Exhibit A-1.

²⁰ Id.

²¹ Tr. at 23.

1 26. Staff's research of the Company confirmed that no complaints had been filed
2 against TDS with the Federal Communications Commission.

3 **Competitive Analysis**

4 27. TDS is seeking a determination that its proposed services are competitive in Arizona.

5 28. TDS proposes to provide facilities-based long distance and private line
6 telecommunication services.

7 29. According to Staff, private line service is a direct circuit or channel specifically
8 dedicated to the use of an end user organization for the purpose of directly connecting two or more
9 sites in a multi-site enterprise (ie., universities, state agencies, hospitals).

10 30. Staff states that TDS will have to compete with various IXC's, who hold a substantial
11 portion of the market, in order to provide its proposed services. Staff believes TDS will have to
12 convince customers to purchase its services; TDS has no ability to adversely affect the CLEC or
13 ILEC markets in Arizona; TDS will have to compete with a large number of facilities-based and
14 resold interexchange carriers in Arizona; and that alternative providers exist in the markets TDS
15 desires to serve. Therefore, Staff believes TDS will have no market power in the markets it wishes to
16 serve and that TDS proposed services should be classified as competitive.

17 31. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

18 **CONCLUSIONS OF LAW**

19 1. TDS is a public service corporation within the meaning of Article XV of the Arizona
20 Constitution, A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over TDS and the subject matter of the application.

22 3. Notice of the application was given in accordance with the law.

23 4. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a
24 CC&N to provide competitive telecommunication services.

25 5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised
26 Statutes, it is in the public interest for TDS to provide the telecommunication services set forth in its
27 application.
28

6. TDS' proposed services are competitive in Arizona.

7. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for TDS to establish rates and charges that are not less than TDS' total service long-run incremental costs of providing the competitive services approved herein.

8. Staff's recommendations, as set forth herein are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of TDS Long Distance Corporation for a Certificate of Convenience and Necessity to provide facilities-based long distance and intraLATA and interLATA private line telecommunication services in Arizona, is hereby conditionally approved, subject to TDS' compliance with the requirements set forth in Finding of Fact No 6.

IT IS FURTHER ORDERED that if TDS Long Distance Corporation fails to comply with the following ordering paragraphs, the Certificate of Convenience and Necessity conditionally approved herein shall be considered null and void after due process.

IT IS FURTHER ORDERED that TDS Long Distance Corporation shall docket conforming tariff pages for each service within its Certificate of Convenience and Necessity within 365 days from the effective date of this Order or thirty (30) days prior to providing service, whichever comes first.

IT IS FURTHER ORDERED that TDS Long Distance Corporation shall procure a performance bond or an irrevocable sight draft letter of credit equal to \$200,000. The minimum performance bond or ISDLC of \$200,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from TDS' customers. The performance bond or ISDLC should be increased in increments of \$100,000 when the total amount of advances, deposits, and/or prepayments is within \$20,000 of the total performance bond or ISDLC amount.

IT IS FURTHER ORDERED that TDS Long Distance Corporation shall file the original performance bond or irrevocable sight draft letter of credit with the Commission's Business Office and copies of the performance bond or irrevocable sight draft letter of credit with Docket Control, as a compliance item in this docket, within thirty (30) days of the effective date of this Decision. The performance bond or irrevocable sight draft letter of credit shall remain in effect until further order of

1 the Commission. The Commission may draw on the performance bond or irrevocable sight draft
2 letter of credit, on behalf of, and for the sole benefit of the Company's customers, if the Commission
3 finds, in its discretion, that the Company is in default of its obligations arising from its Certificate of
4 Convenience and Necessity. The Commission may use the performance bond or irrevocable sight
5 draft letter of credit funds, as appropriate, to protect the Company's customers and the public interest
6 and take any and all actions the Commission deems necessary, in its discretion, including, but not
7 limited to returning prepayments or deposits collected from the Company's customers.

8 IT IS FURTHER ORDERED that TDS Long Distance Corporation shall notify the
9 Compliance through a compliance filing when it begins serving its first facilities-based
10 telecommunication customers.

11 IT IS FURTHER ORDERED that TDS Long Distance Corporation shall abide by the
12 Commission's adopted rules A.A.C. R14-2-1204 (A) and (B) that address Universal Service in
13 Arizona.

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IT IS FURTHER ORDERED that TDS Long Distance Corporation shall file an application pursuant to A.A.C. R14-2-1107 if it desires to discontinue its services in Arizona and if TDS Long Distance Corporation fails to meet the requirements set forth in A.A.C. R14-2-1107, its performance bond or irrevocable sight draft letter of credit on file with the Commission shall be subject to forfeiture.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

YBK:db

1 SERVICE LIST FOR: TDS LONG DISTANCE CORPORATION

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